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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CHOKSHI, PINKAL R

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,696	Applicant(s) GERVAIS ET AL.	
	Examiner PINKAL CHOKSHI	Art Unit 2425	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6,12,14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6,12,14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1/8/2009 have been fully considered but they are not persuasive and are moot in view of the new ground(s) of rejection.

Regarding claim 6, Applicant asserts that Lemmons does not perform an additional check if a channel is available for replacement. Examiner respectfully disagrees. Lemmons discloses (§0033) that the receiver transmits channel list data of currently viewed and non-viewed channels. At step 606, first check is performed to see if there is any channel which is not currently viewed/broadcasted based on the data received from the receiver. If it's determined that the channel is not being viewed, then at step 608, second check is performed to see if the data channel is being used for the non-viewed channel. Basically second check determines if the non-viewed channel is available for replacement as represented in Fig. 6. The rejection is maintained.

Regarding claim 12, Applicant alleges that Lemmons does not disclose a program is replaced even if at least one user selects the program. Examiner respectfully disagrees. Lemmons discloses (§0009, §0011, and claim 1) that program is being replaced based on at least one receiver of the plurality of receivers that identifies non-viewed channel.

With regard to the dependent claims, the respective rejection is maintained as Applicant has only argued that the secondary reference does not cure the deficiencies of Lemmons, nevertheless it is the Examiner's contention that Lemmons does not contain any deficiencies. Claims were rejected based on the reference as a whole and

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not just the particular paragraphs/columns sighted by the Examiner. See the new rejection below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 6 and 12** are rejected under 35 U.S.C. 102(b) as being anticipated by US PG Pub 2002/0059626 to Lemmons (hereafter referenced as Lemmons).

Regarding **claim 6**, “a method for use in an upstream endpoint of a video distribution system” reads on the method of optimizing utilization of available bandwidth in the cable network (§0003) disclosed by Lemmons and represented in Fig. 1.

As to “the method comprising: receiving tuning data from at-least-one endpoint of the video distribution system, the tuning data representing programming that is currently being viewed at the at-least-one endpoint” Lemmons discloses (§0031 and claim 10) that the receiver transmits a message, which indicates that viewer has selected a channel to be viewed and the device is turned on/off, to the head-end as represented in Figs 1 and 3.

As to “adjusting programming to replace content as a function of the received tuning data” Lemmons discloses (§0032) that an algorithm for

reassigning channels reassign channels that are not being viewed as represented in Fig. 5.

As to “wherein the adjusting step includes the steps of determining from the received tuning data at-least-one program that is not being viewed” Lemmons discloses (¶0032) that based on the list of viewed channels checked, device determines the channels that are not being viewed as represented in Fig. 5 (element 508).

As to “checking if the at-least-one program that is not being viewed is available for replacement before performing the replacing step” Lemmons discloses (¶0034 and ¶0036) that the algorithm checks if the non-viewed channel is available and not being used by data services before replacing with full data program transmission as represented in Fig. 8. Lemmons further discloses (¶0033) that the receiver transmits channel list data of currently viewed and non-viewed channels. At step 606, first check is performed to see if there is any channel which is not currently viewed/broadcasted based on the data received from the receiver. If it's determined that the channel is not being viewed, then at step 608, second check is performed to see if the data channel is being used for the non-viewed channel. Basically second check determines if the non-viewed channel is available for replacement as represented in Fig. 6.

As to “if the at-least-one program that is not being viewed is available for replacement, replacing the at-least-one program that is not being viewed with another program” Lemmons discloses (¶0032) that the non-viewed channel

frequency is assigned with the data service by allocating packets in an MPEG stream to data services.

Regarding **claim 12**, “a method for providing a video broadcast service to a number of users” reads on the method of optimizing utilization of available bandwidth in the cable network (§0003) disclosed by Lemmons and represented in Fig. 1.

As to “method comprising: identifying at least one program channel as a replaceable program channel” Lemmons discloses (§0032) that based on the list of viewed channels checked, device determines the channels that are not being viewed or replaceable as represented in Fig. 5 (element 508).

As to “providing the replaceable program channel to the number of users, wherein the replaceable program channel may at times be replaced by content from another program channel as a function of the number of users that select the replaceable program channel” Lemmons discloses (§0032) that based on the number of viewers that selects non-viewed channels, system will re-assigned those frequencies with data services by allocating packets in an MPEG stream to data services.

As to “wherein the number of users that select the replaceable program channel is greater than zero” Lemmons discloses (§0009, §0011, and claim 1) that the program is being replaced based on at least one receiver of the plurality of receivers that identifies non-viewed channel.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 14 and 16-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemmons in view of US Patent 7,363,643 to Drake (hereafter referenced as Drake).

Regarding **claim 14**, ‘apparatus for use in an upstream distribution point of a multi-media communications system” reads on the system of optimizing utilization available bandwidth in the cable network (§0003) disclosed by Lemmons and represented in Fig. 1.

As to “the apparatus comprising: a receiver for receiving tuning data from at least one downstream endpoint of the multi-media communications system” Lemmons discloses (§0031 and claim 10) that the receiver transmits a message, which indicates that viewer has selected a channel to be viewed; when the device is turned on/off, to the head-end as represented in Figs 1 and 3.

As to “a processor operative on the received tuning data for replacing content of a program channel that is not being viewed with new content” Lemmons discloses (§0032) that an algorithm for reassigning channels reassign

channels that are not being viewed as represented in Fig. 3 (element 308) and Fig. 5.

As to “a memory for storing a replaceable program channel list comprising a list of program channels and a respective current selection status, wherein the processor updates the current selection status in accordance with the received tuning data” Lemmons discloses (§§0028 and §§0032) that the memory unit stores instruction for processing unit, channel look-up table for selected channels, menu information for channels and other information as represented in Fig. 3 (element 314). As to “wherein the list of program channels indicates for each program channel if the program channel is replaceable” Lemmons discloses (§§0033) that the receiver transmits channel list data of currently viewed and non-viewed channels. At step 606, first check is performed to see if there is any channel which is not currently viewed/broadcasted based on the data received from the receiver. If it's determined that the channel is not being viewed, then at step 608, second check is performed to see if the data channel is being used for the non-viewed channel. Basically second check determines if the non-viewed channel is available for replacement as represented in Fig. 6.

As to “IGMP signaling includes a packet comprising downstream frequency information and packet identifier information representing the programming that is currently being viewed” Lemmons discloses (§§0029) the representation of programming with downstream frequency information and packet identifier information as represented in Fig. 2.

Lemmons meets all the limitations of the claim except “wherein the tuning data is received via a modified form of IGMP (Internet Group Management Protocol) signaling.” However, Drake discloses (col.4, lines 37-55) that the STB receives event information data using IGMP signals. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Lemmons invention by using IGMP signals to transmit downstream frequency data and packet identifier as taught by Drake in order to receive traffic for a specific group of frequency/channels and allow more efficient use of resources.

Regarding **claim 16**, “the apparatus wherein the processor checks the current selection status of the replaceable program channel list to determine if a program channel is not being viewed” Lemmons discloses (§0032) that if the channel is found that is not being viewed, then the data service is assigned to the non-viewed channel as represented in Fig. 5 (element 508).

Regarding **claim 17**, “the apparatus wherein the upstream distribution point is a cable head-end” Lemmons discloses (§0024) that the system includes head-end as represented in Fig. 1 (element 102).

Regarding **claim 18**, “the apparatus wherein the multi-media communications system is a cable broadcast system” Lemmons discloses

(¶0025) that the head-end system uses cable television broadcast network as represented in Fig. 1.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PINKAL CHOKSHI whose telephone number is (571) 270-3317. The examiner can normally be reached on Monday-Friday 8 - 5 pm (Alt. Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Pendleton can be reached on 571-272-7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pinkal Chokshi/
Examiner, Art Unit 2425

/Brian T. Pendleton/
Supervisory Patent Examiner, Art Unit 2425